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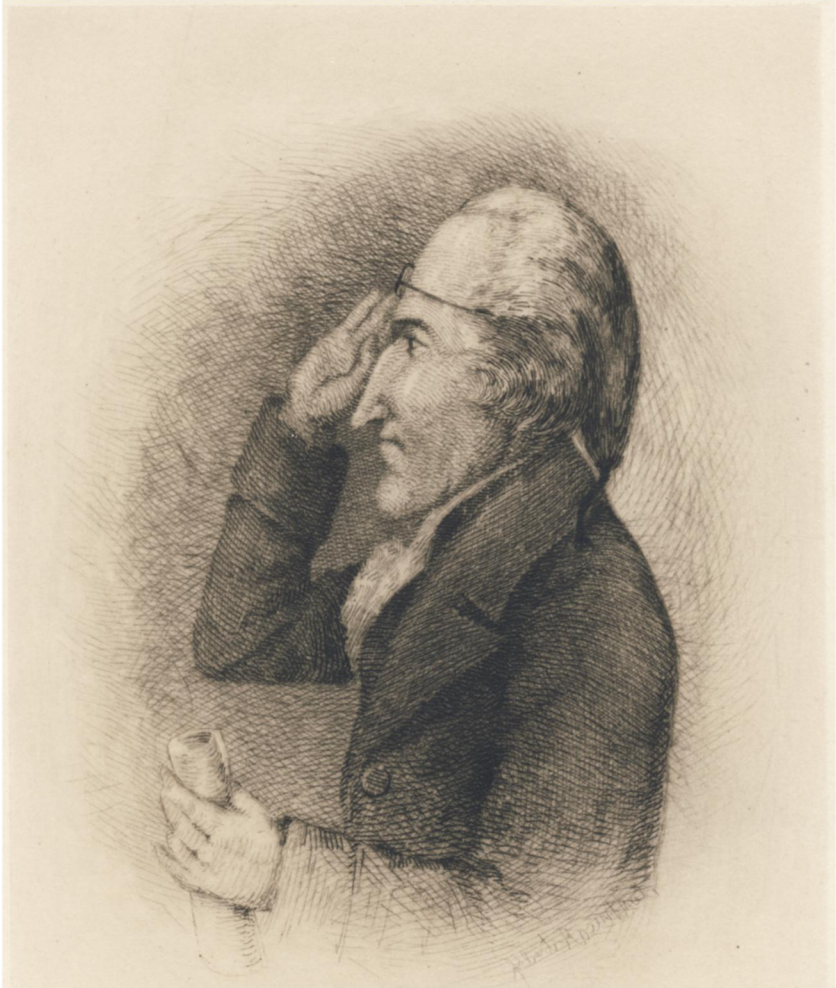
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WILLIAM LEWIS.  
Died 1819.

*From a contemporaneous drawing by Robert Smith.*

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THE LEADERS OF THE OLD BAR OF PHILADELPHIA.

BY HORACE BINNEY.

INTRODUCTION.<sup>1</sup>

IN the title of these sketches, "The Old Bar of Philadelphia," refers to the first Bar after the Declaration of Independence.

Of the primitive Bar of the Province, we know nothing; and next to nothing of the men who appeared at it from time to time, up to the termination of the Colonial government. The statement of Chief-Justice Tilghman, in the Bush Hill case,<sup>2</sup> reveals to us all we know, and all that probably we can ever know, in regard to the subject; for, as the grandson of Tench Francis, who was Attorney-General in 1745, and connected by marriage and association with the most eminent families of the Bar, he knew as much of the former Bar as any of his contemporaries, and they have all long since departed without adding anything to what he left. "From what I have been able to learn," said the Chief Justice, "of the early history of Pennsylvania, it was a long time before she possessed any lawyers of eminence. There were never wanting men of strong minds, very well able to conduct the business of the Courts, without much regard to form. Such in particular, was Andrew Hamil-

<sup>1</sup> In 1859 the first edition of Mr. Binney's book was published, followed, in 1866, by a second edition of only one hundred copies. This interesting work has now become so scarce that we feel warranted in republishing it, adding thereto portraits of the gentlemen of whose personal and professional life he writes.—ED. PENNA. MAG.

<sup>2</sup> *Lyle v. Richards*, 9 Serg. & Rawle.

ton, the immediate predecessor of Mr. Francis, and the father of the testator; but Mr. Francis appears to have been the first of our lawyers who mastered the technical difficulties of the profession. His precedents of pleadings have been handed down to the present day; and his commonplace book, which is in my possession, is an evidence of his great industry and accuracy." "Mr. Francis succeeded Mr. Hamilton, and Mr. Chew succeeded to Mr. Francis, in the office of Attorney-General, and in professional eminence."

Mr. Chew remained at the Bar until 1774, and was Chief Justice of the Supreme Court from that time until the former order of things passed away; and although there are a few other names, at the same epoch, to be added to these three, yet the narrowness of the tradition, taken altogether, the constitution of the Provincial Supreme Court, in which the Chief Justice was commonly the only lawyer, the total absence of every note of judicial decision until 1754, and the all but total until after 1776, had caused that Bar to disappear from nearly all memories at the beginning of the present century; and therefore, in the middle of the fourth generation since the Revolution, I have taken the liberty of referring to the earliest Bar under the new order of things, as being the Old Bar of Philadelphia. From that time to the present, the Bar of this City has been an identity, superintended by competent and frequently very able judges, whose proceedings have been vouched by authoritative reports, and having, at all times, among its leaders, men of legal erudition and ability. It is not, however, to ignore the primitive Bar, so much as to give its due precedence to the first bar of the Commonwealth as a scientific Bar, and as the true ancestry of the present Bar, that I have used the language in the title-page.

The description of the subjects of sketch as *the* leaders of the Bar, may appear to be too definite; but although definite, it is not meant to be exclusive. It must not imply that there were no others who held the position of leaders. The three in particular were the seniors, by a few years, of all the Bar, and were generally the most prominent in the professional as well as in the public eye. My own freer association with them has induced me to select them from the body, and to pay to them a debt which, though it may have too little dignity to be called a debt to the law, is a debt or duty to their learning and ability in the law. In the new order of things introduced by the American Revolution, these gentlemen largely contributed to establish the reputation of the Bar of this City. Their professional example and learning were of great and extensive use in their day, and ought to be handed down by something better than such fugitive pages as these.

A lawyer who has passed his youth and early manhood in the society of such men, is the happier for it through life, and especially in old age. On all occasions of vexation or weariness with things near at hand, he can escape at pleasure into the past of these men, which was full of their influence, full also of judicial independence and dignity,

and full of professional honor, with unlimited public respect; from which scene the few clouds that are to be found in the clearest skies have been absorbed or dispelled by time, and to which the clouds of his own day, if there are any, cannot follow him.

H. B.

PHILADELPHIA, March, 1859.

WILLIAM LEWIS.

It may be thought that I select a very narrow and local theme, when I attempt to sketch some of the personal and professional characteristics of a lawyer of the Philadelphia Bar, who was little more than a lawyer, though he was a great lawyer, and who culminated in his profession more than sixty years since. But I adopt the theme, in some degree, because it is narrow and local, and is therefore more within my compass; and because it is beyond the memory of most of the living, and therefore, in the advantages of personal recollection, is pretty much an octogenarian perquisite of my own. What I write upon the subject, cannot be of any general interest. It is too remote, and too limited. It wants the essential, and, at this day, all-engrossing attractions of the new and the various or diversified; and it will want, what alone can supply the place of these attractions, a treatment that is a substitute for the subject. But it is a debt that I would pay; the joint debt, perhaps, of several, which has fallen, according to law, upon the longest liver; and I would pay it for them and for myself. A general interest in the transaction is therefore comparatively indifferent to me. I expect, consequently, that no one out of the Pennsylvania Bar, and very few who are not of the Philadelphia Bar, will look at it; and, except to this Bar, I offer neither invitation nor inducement to put aside for it, even for an hour, the more stimulant interests of the day.

Has not the modern race of lawyers everywhere undergone some change from the old times, by rising or falling into the Athenian category,—the very large class of those who spend their time in telling or hearing some new thing? There are, at least, professional tendencies that way, which make them less and less curious of anything that savors

of a former age. Most of the old limitations have been abridged, and the exceptions to them cut away, to save the labor of looking back. Old authorities no longer divide with old wine, the reverence of either seniors or juniors. Most of the old law books, that used to be thought almost as good a foundation for their part of the truth, as the prophets and apostles are for the whole truth, are taken away, I rather think, from the bottom of the building, and thrown into the garret. That Littleton *upon* whom Coke sits, or seems to sit to the end of things, as Carlyle says, has fewer than of old, I suspect, to sit with him for long hours to alleviate the incumbrance. For the most part, as I am told, the incumbent and the succumbent lie together in the dust, which uppermost not many care to know. All the *Entries*, Brooke, and Coke, and Levinz, and Rastall, and the others, have made their *exits* some time ago, and will not appear again before the epilogue. Almost any law book that is more than twenty-one years of age, like a single lady who has attained that climacter, is said to be too old for much devotion. Indexes, Digests, and Treatises, which supply thoughts without cultivating the power of thinking, and are renewed with notes and commentaries *de die in diem*, to spare the fatigue of research, are supposed to be the best current society for student as well as for practitioner. Such are the rumors which float upon the air. "Old things are passed away, all things are new,"—a great truth in its own sense when it was first spoken, and always—is now thought to be true in all senses, and renewable from year to year, forever; and lawyers give as ready a welcome to new things, and turn as cold a shoulder to the old, as the rest of the world. Such is the apprehension.

I ought therefore to be, and am, very shy about writing anything upon an antiquated subject, with even an apparent direction to this body of men generally; and therefore I repeat that I do not expect the perusal of what I write, either in regard to the very strong and accomplished lawyer whose name is at the head of my page, or of the two whose names are to follow, by any but a few of the lawyers of the

Philadelphia Bar, either themselves senescent, and in the practice of turning their eyes occasionally backward as well as forward, or some young lawyer, who bears in his veins some of the blood of the old Bar; and if the latter description shall do me that honor, I may give him a useful reminder of the oblivion that has fallen upon some of the ablest of the profession, and which will come upon him some day, though he shall live to be among the most able. He may be led, perhaps, to seek an antidote for the apprehension; and I can assure him that he will have no difficulty in finding it, if he "seek diligently."

At the age of the American world in which Mr. Lewis lived, or rather in which he came to adult age and character in his profession, there was no crowd of cities in our country to prevent a marked local reputation at the Bar of a particular city, from passing freely through the length and breadth of the inhabited land; or from being enlarged by the mist of distance, as is universally the case in such a condition of society. It happened in that day, and probably from this circumstance, that from Maryland to Massachusetts, there was, in several of the States, some one name at the Bar which, in the view of persons removed a few hundred miles, loomed very large, and overshadowed all other lawyers in the same State. Theophilus Parsons at Boston, Luther Martin at Baltimore, and William Lewis at Philadelphia, were respectively such overshadowing names. In one or two of the instances, the shadow disappeared altogether in coming up to the object; for, at that point, names of less general mark were found to be free from all eclipse. In all, perhaps, the shadow was, by the same approach, reduced to a penumbra. Mr. Parsons, of Boston, was regarded, in Philadelphia, as the first and comparatively the only great lawyer in Massachusetts. In Boston, Mr. Dexter, who was also a great lawyer, was considered his equal in intellectual powers, as indeed he was equal to any one; but in maturity and fulness of legal learning, Parsons was held to be the first. The same, perhaps, may be said in regard to Mr. Martin and one or more of his brethren at

the Maryland Bar. Nearly the same of Mr. Lewis. But although Mr. Lewis was the senior of the Philadelphia Bar, and was in reality a very able as well as eminent lawyer, his reputation was, from accidental circumstances, more transcendent abroad than at home. It was very great at home; but there was at least one at his side who, in some respects, stood out in a clearer light before the members of his own Bar, and one or two others who were near to them, by what Iago calls "the old gradation, where each second stood heir to the first."

There was at the same period, as great learning and eminence at the Bar of New York, as at any of the Bars of the country; but the greatest name at that Bar did not belong exclusively, nor even principally, to the Bar; and the fame which had followed the greater relations of his military and political life, drew distant attention away from the professional talents which at that time adorned the Bar of New York. Such a man as Richard Harison would have been deemed a great lawyer anywhere. Mr. Van Vechten, of Albany, of the old Dutch stock, stood like a sea-wall of the old country, against the irruption of any bad law into the causes he sustained. But both these gentlemen were better known at home than abroad. For large and original speculation, Hamilton was a greater lawyer than either of them; but in legal erudition, perhaps, not the equal of either. Hamilton's considerable and very available learning in the law, was overshadowed by his learning in public or political law, by his versatile talents, by his marvellous powers of formation and order in war and government, and by the great relations, military and civil, in which he stood to the country. I am not aware, therefore, of anything, accidental or otherwise, which caused any one name at the Bar of New York, in the last century, to loom so large, in the distance, in its professional dimensions, as to prejudice the pretensions of other names at the same Bar.

This distant reputation was by no means a decisive test of superiority at the Bar. It proceeded as often from great public interest in the questions with which the advocate had

grappled successfully, as it did from his own general ability and learning.

There is some proof of this in the reputation of Andrew Hamilton, of whom a word from Chief-Justice Tilghman has been said in the Preface. He was not a scientific or thoroughly-trained lawyer; but he gained almost unlimited fame by his defence of John Peter Zenger, in the Supreme Court of New York, upon an information of libel, in the year 1734. It was the spirit of Independence, even at that early day in the Colonies, that lifted him up to general admiration, and to professional distinction. And yet his argument, which we have, it is said, from his own pen, treats of no such topic. He merely claimed to liberate the jury from the authority of some disagreeable law, and of an obnoxious Court holding its appointment from the Crown. No lawyer can read that argument without perceiving, that, while it was a spirited and vigorous, though rather overbearing, harangue, which carried the jury away from the instruction of the Court, and from the established law of both the Colony and the Mother Country, he argued elaborately what was not law anywhere, with the same confidence as he did the better points of his case. It is, however, worth remembering, and to his honor, that he was half a century before Mr. Erskine, and the Declaratory Act of Mr. Fox, in asserting the right of the jury to give a general verdict in libel as much as in murder; and, in spite of the Court, the jury believed him, and acquitted his client.

I was familiar with the praise of Mr. Parsons, in Massachusetts, while I was receiving my education at Cambridge, and am still thankful for the opportunity I enjoyed of witnessing, in the Supreme Court of that State, in a session at Cambridge, for the County of Middlesex, in 1795 or 1796, an exhibition of intellectual gladiature of the brightest kind, between Parsons, as counsel for one Claffin, indicted of blasphemy under a statute of Massachusetts, and James Sullivan, the Attorney-General of the State. The wide reputation of Mr. Parsons was in no respect accidental.

The Court was held by Dana, Chief Justice, Paine, Sum-

ner, and Dawes, Justices. The blasphemy I will not repeat, but it gave Mr. Parsons an occasion or opportunity of showing up some of the supposed phases of Calvinistic theology, or, more accurately, some of the opinions or statements of writers supposed to be of that school, which gave countenance, he thought, to what was charged against Claflin as blasphemy, and were, if anything, rather worse. I supposed, at the time, that there was no other help for Claflin; and I dare say that, bad as any blasphemy may be, there may be found in some extreme views of very different schools of theology, something quite as bad. But the marvel was, to see the promptness and acuteness with which Parsons repeated, explained, applied, and enforced his citations in the best form for his client. My imagination fired at the spectacle of this *omnis homo*, as well furnished in theology as in law, and of as much repute for Greek as for English, Socratic in his subtlety, and not otherwise in his careless dress, his purple Bandanna handkerchief curled loosely over his neckcloth, and his reddish-brown scratch, something awry, —he all the while pouring from under it the doctrines he had culled, and weaving them up with the subtlest ingenuity, to make a covering broad enough for Claflin. It was a glory of the Bar. But the stiff old Statute was too much for him. I think I recollect a part of Claflin's sentence, so strange to the ear of a Pennsylvania lawyer—that he should sit an hour *upon* the gallows, with the rope round his neck! Barring the rope, I should have been willing to sit there for two, not for blasphemy, nor alongside of Claflin, but to hear a repetition of Parsons. When I returned to Philadelphia, I was not surprised at the reputation which there surrounded the name of Theophilus Parsons.

WILLIAM LEWIS was a native of Chester County, in the State of Pennsylvania, where his birth took place about the year 1745. Both of these facts, however, rest upon early report, rather than upon authentic record. His condition in early life was that of the sons of country people generally, at that time. He used to say, as I have heard, that he

had driven wagon in early manhood; and I know that he was very proud of his skill in driving a pair of spirited horses to his phaeton at an advanced period of his life. His early education was no doubt imperfect; but by the force of strong native powers he acquired, pretty much by self-teaching, a good English education; and while he was studying law in the office of Nicholas Waln, an eminent Quaker and highly respectable lawyer, he mastered enough of Latin and French to read the old Entries and Reports, and he read them faithfully. His literary tincture was light. I rather suspect that it did not amount to what may be called the middle tincture, now pretty common among us; but all his life, after I knew him, he was something of a purist in language, and very exact in pronunciation, according to the best standards; and, with some satisfaction, would correct an error in either respect by an educated man, which his ear detected at the Bar. He must have read law intensely at some period of his life, for no man of his day knew the doctrines of the common law better.

He came to the Bar in Philadelphia before the adoption of the Constitution in 1776, as his friend, Edward Tilghman also did. The books in the office of the Prothonotary of the Supreme Court, of that early day, and in that of the Common Pleas of Philadelphia County, from which Mr. Williams has made his printed Catalogue, cannot be relied on as evidence of *first* admissions to the Bar. The Catalogue records the admission of Edward Tilghman as of March, 1783; whereas his cousin, Chief-Justice Tilghman, says, in *Lyle v. Richards*, that he was in practice at the Bar in 1774, which was immediately after his return from the Temple. Mr. Lewis, by the same Catalogue, was admitted in September Term, 1777, the first Supreme Court which was held by Chief-Justice McKean, after his appointment and that of his associates, in July and August, 1777, under the new Constitution, and was put to flight, in the same month, by the entry of the British into the City. There must have been a previous admission, in these instances, by a Colonial Court. Mr. Lewis's name appears as counsel in

one of Mr. Dallas's notes, in September, 1778, a case of high treason, and not a very probable position for a gentleman in the first year of his practice; and Mr. Tilghman's appears in a case decided at Nisi Prius in August, 1773, which may be a mistake of a year in the date, or the case may have been concluded in Bank in the following year. During the whole of the Revolution, and for years afterwards, Mr. Lewis was engaged in nearly all the important causes, and especially in cases of high treason, for which he had a special vocation and capacity, and of which there was a plentiful crop in our City of Brotherly Love, up to the advent of peace. "For the divisions of Reuben, there were great searchings of heart," in those days; and the occupation of the City by the enemy, from the close of September, 1777, to the middle of June, 1778, did not heal nor allay them. Perhaps this City was the only judicial school in the country for the law of treason; and it was in this school that Mr. Lewis got his full growth in crown law, and held his high position in it, pretty much without competition, to the close of the century. In treason causes, he was uniformly on the side of the defendant, and was generally successful; and this was the accident that diffused his reputation so far and so widely. He never showed more vigor, self-possession, and dignity, in subsequent periods of his life, than in this description of cause. His deep learning and facility in the law of treason and of other high crimes, was remarkable. He had studied the law of treason, especially, with passion; and had mastered all its details, the law of its process, evidence, and trial, as well as the offence itself. He knew every vicious excess that had been perpetrated or attempted in furthering the doctrine of constructive treason, for which he felt the utmost abhorrence. He had at the tip of his tongue, all the gibes and scorns that prosecuting attorneys had spit into the faces of the accused, in the oppressive spirit of former times; and would repeat them with disdain at the first symptom of renewal in his presence. I cannot forget the vehemence, amounting to rage, with which, in rebuke of some harsh general reprobation

tion of a prisoner upon trial, he arraigned, as an example to be forever abjured, the Attorney-General Coke, for his brutal language to Sir Walter Raleigh, on the trial of the *bye* and the *main*. "Thou viper! I *thou* thee, thou traitor."—"Thou art thyself a spider of hell."—"Go to, I will lay thee on thy back for the confidentest traitor that ever came to the Bar."

In a letter of the 15th of December, 1778, from President Reed to the father of Jared Ingersoll, afterwards of the Philadelphia Bar, which is published in "The Life and Correspondence of President Reed," by his grandson, there seems to be a pretty broad slur upon the members of this Bar at that epoch: on one part of it as not possessing considerable abilities, and upon the rest as being destitute of political virtue. This, at least, is one of the several versions of a clause in the letter. "Our lawyers here," says President Reed, "of any considerable abilities, are all, as I may say, in one interest, and that not the popular one." President Reed was at that time in the popular interest himself, though he had been as much opposed as any one to the Constitution of 1776,—its plural executive and single legislature, and its universal oath of office to do nothing directly or indirectly to prejudice the Constitution and Government, that is to say, not to alter, or to counsel or attempt the altering of, a single feature of it,—until he took office under it himself. On the happening of that event, he led or followed a popular interest of a certain kind, in the administration of Government. Those times had not yet got into joint; and perhaps the best spirit in which to read the words of the contemporary actors on every side, is to make the largest abatement from that which is written with the most bitterness and personality. The "popular interest" was undoubtedly, in one sense, the interest of the Confederation, of independence, and of success in the pending conflict. To be false to this, was always a great, and sometimes a just reproach. But there was also a "popular interest," to some extent, in a prospective policy, that would leave no man at liberty to counsel moderation or temper,

either in social intercourse or in legal regulations, any more than the Constitution of 1776 did to any one of its officers, judicial, civil, or military, in regard to change, or the recommendation of change, in its own stipulations. In the eyes of this "popular interest," every Quaker was a Tory or traitor; and all social affinities with that body of men, a body of great respectability, wealth, and order, were regarded as implicating the party in a lesser or greater treason, like the *bye* and the *main* of Sir Walter Raleigh and his friends. We must read such times with the personal glossary of the writer or speaker at our side, or we shall often fail to understand them. If President Reed meant to describe James Wilson, John Ross, Alexander Wilcocks, William Lewis, Edward Tilghman, and William Bradford, who were all at the Bar in December, 1778, and were undeniably men of "considerable abilities," as being untrue to the Confederation, to independence, or to the success of the country in her struggle, then he wrote from a very partial and prejudiced view. None of these men certainly were of the proscriptive party, nor were they farther from that than from unfaithfulness to the country. Having some knowledge of President Reed's relations in social life, I cannot believe that such was his meaning. I incline to think that he meant no more by it, than that the able part of the Bar was, at that time, on questions of local policy, the losing party at the polls, in which the President was successful. He probably meant no more than to woo his friend's son to his own side in politics, as the best for an opening at the Bar; and as the clause admits of this interpretation, I prefer adopting it. Mr. Lewis was an adherent of the Declaration of Independence, but he was not bitterly proscriptive; and was entitled to much higher praise than that of not refusing his professional aid to those who were hounded by some of the "popular interest," on account of the treason of quiet wishes and preferences for something better than a proscriptive government. He was a republican, and the open and uniform friend of Washington, and of Washington's friends and principles, as were thousands of the best

men in Philadelphia, at the side of Mr. Lewis, who, nevertheless, were not, in a certain sense, in the "popular interest."

The prominence of the City of Philadelphia as the seat of the Congress of the Confederation, and her superiority in population and commerce, up to the removal of the seat of the Federal Government to the City of Washington, in 1801, may account in some degree, for the diffusion of Mr. Lewis's celebrity, which partook of the distinction awarded to the City. But it was not in criminal law alone, that he was deemed by other cities, to be the most able man at the Bar. He was a person of great intellectual ardor, and of a strong grasp of mind; and both in law and politics, and other matters too, he took firm hold of whatever interested him. His great devotion was, of course, to professional studies. He explored every field of law, common, constitutional, international, commercial, and maritime; and with singular predilection, that very intricate *close* or quarter of the common law in which the doctrine of pleading is, or formerly was, fenced up from easy access, even against many of the profession. If the fences have been lowered, and in some parts prostrated, in modern times, it may be doubted whether it has not been more for the benefit of estrays, than for the culture of the proper flock, and the good of those who profit by their thorough breeding. The abuse of the doctrine has, at times, been excessive, and is properly restrained or remedied; but the abolition of it, supposing it to be possible, would make a Babel of the court-room. It was Mr. Lewis's notion that nothing but good pleading could prevent a confusion of tongues, upon every important trial; and every sound lawyer is probably of his opinion.

He was much interested in the abolition of slavery within the State of Pennsylvania. Since his death, some questions have been raised in regard to the part, whether active or consultative, that he took in promoting the Act of 1st March, 1780, "for the gradual abolition of slavery in Pennsylvania;" and I do not mean to raise any question of my own. But I am perfectly clear that, in his lifetime, and

at the beginning of this century, when others who may now be thought to have been actors in the matter, were living, Mr. Lewis was currently spoken of, at the Bar, as the draughtsman of that Act. Whether the Preamble, as well as the enacting clauses, were said to have come from his pen, I cannot report, because the distinction has first been made since Mr. Lewis's death. Though, in 1779, he was not a lawyer of long standing, he was abundantly mature for the work, and that was the day of young men in the courts and throughout the country. The old men, in general, as they always do, and beneficially too, clung to associations of early life, and did not enter freely upon the responsibilities of the new public life that had sprung up around them.

During the two administrations of Washington, and continuously during life, Mr. Lewis was a thorough Federalist, amusingly anti-gallican, and entirely anti-Jeffersonian; and upon law questions of difficulty that arose in the Executive Department, though he was not an official adviser, he was familiarly consulted by General Hamilton, the Secretary of the Treasury, with whom he continued on terms of confidence and mutual respect during General Hamilton's life. The memorable argument of Hamilton, in 1791, upon the constitutionality of the Bank of the United States, or rather of the Bill to incorporate the Subscribers to the Bank, was read to Mr. Lewis before it was sent to the President, as I have heard from Mr. Lewis himself, as well as from one of General Hamilton's sons; but I have never heard a surmise that it was in any respect altered in consequence of this. Its great principles were discussed between the two, sitting in Mr. Lewis's office, or walking in his garden, until all the reasons of the Secretary of the Treasury, and the answers to the objections of the Secretary of State, and of the Attorney-General, were scrupulously examined and weighed. No lawyer could have been better in such a consultation than Mr. Lewis, who was fertile in the suggestion of doubts, and quick in the solution of them, and had an admirable *coup d'œil*

to discern the strong and weak points of assault and defence.

That argument of General Hamilton, it should be remembered, first enunciated the great rules of interpretation, by which the powers delegated by the people of the United States to Congress, were to be construed; and they were afterwards tested by the Supreme Tribunal of Federal law, and stood the test then and for sixty years from the adoption of the Constitution. I hope to be excused for thinking that no judicial argument, before or since, has shaken, or ever will shake, those rules of interpretation; and that none other can maintain the constitutional relations of the States and the United States, the one to the other, and give superiority to each in its proper sphere. How much the battle-axe of party may make the lighter scale in some measures the heavier in all, remains for future history. None but a parricidal arm would cast it in; nor can it remain there very long without deranging the orbit of each system, and generating a new centre of gravitation, when both systems may be "folded up as a vesture." If *State Rights* mean anything to the contrary of that argument, they mean that the United States shall not be administered by a fair construction of the Constitution, but by the *platforms* of party.

It was a compliment of the first order from the great statesman and constitutional lawyer who elicited the argument, to submit it to the lawyer of Pennsylvania, whom he called into consultation; and Mr. Lewis was justly proud of it, and constantly glorified the man who prostrated, for the time, the political metaphysics of Mr. Jefferson, the first man, on his part, also, who broached the doctrine of strict construction against the United States, and of the most liberal, consequently, for the reserved rights of the people and the States. Mr. Jefferson was a true son of Virginia, in his ambition for State supremacy, until he was elected to the Presidency. After that, he surrendered, with modest diffidence, his doctrine of strict construction, to obtain an empire from France. If his friends were satisfied that Louisiana could be brought into the Union without an

amendment to the Constitution, he “certainly *would acquiesce with satisfaction* ;” “but the less that was said about any constitutional difficulty, the better :” “and it would be desirable for Congress to do what was necessary *in silence*.” These are his own words. Happy adaptability ! Greatest of managers !

Mr. Lewis was always ready to render the like patriotic service to the administration of the Father of his Country ; and it was no doubt from this motive, that he accepted the commission of District Judge of the United States for the Pennsylvania District, in the summer of 1791, and held it until the spring of 1792, when Judge Peters was appointed. He must have foregone, for the time, his large professional emoluments, to meet a public exigency on the death of Judge Francis Hopkinson. Mr. Jefferson, in his letter to Mr. Hammond, on the subject of interest on the British debts during the period of the Revolution, cites the opinion of Mr. Lewis in support of his own views ; and to meet this question judicially, was perhaps one of his motives for accepting temporarily the appointment.

In February, 1794, he was counsel for the petitioners against the election of Albert Gallatin to the Senate of the United States, by the Legislature of Pennsylvania, and was heard before the Senate: the first occasion on which the Senate opened its doors to professional counsel, or to the public.

The objection to Mr. Gallatin was an alleged defect of citizenship. He was a native of Geneva, in Switzerland. He arrived at Boston, in the United States, in May, 1780 ; and in October following, he went to reside at Machias, in the District of Maine, where he remained a year, and performed some volunteer military service. He afterwards owned land, and resided in Virginia, and took an oath of allegiance to that State in October, 1785 ; and supposing this, and not his residence and military service at Machias, to have been the commencement of his citizenship, then he had not been a citizen nine years, which the Constitution requires, when elected. The question has ceased to be of

any interest; but it was a great point at that day, when a rising party wanted Mr. Gallatin's financial knowledge and quick eye to point their batteries against the policy of Washington. Mr. Lewis gave himself to the frustration of this object with infinite satisfaction, and succeeded in the Senate by a very slim majority. But substantially it was no success, as Mr. Gallatin was elected to the next House of Representatives.

But it was in the special field of his profession, that Mr. Lewis best exhibited the depth and the purity of his legal learning and principles, and the fine ideal of a great lawyer and advocate by which he was animated. His devotion to the maintenance of the just authority of the Court and jury, and of the rights of the Bar, and of the parties and people, which the study of the common law is so apt to inspire, was not less, than to the repression of any unjust assumption by either of them. In criminal causes especially, whatever powers or prerogatives had been given by Magna Charta, the Constitution, or the law, either to the courts or the people, for the vindication of public justice and order, or for the defence of personal liberty and reputation, had a sleepless guardian in him; and he kindled at nothing sooner than an invasion of any of these great securities on any side, to the prejudice of either Court or jury, or of the independence of the Bar, or of the full exercise of defence against criminal accusation. In professional life constantly, and in public life when he was called to it, his learning and powers of research, his energy, and his oratory, not seldom rising to the highest order of forensic eloquence, were freely devoted to this his almost ruling passion.

He achieved a great victory at the Bar, and also in the Legislature of Pennsylvania in the year 1788, when a spirit of factious jealousy, under the lead of a very ardent and determined man, aspired to deprive the Supreme Court of the State, of one of its most ancient and necessary powers. As counsel, Mr. Lewis had asserted and maintained the right of the Court to punish Colonel Oswald by fine and imprisonment, without trial by jury, for a contempt of

Court, in the columns of a newspaper; and in the Legislature he defeated a very active effort, by some of the strongest members of the country, to impeach Chief-Justice McKean and certain of the Judges for having exercised the power. He did this, though McKean was no friend of his, nor he of McKean. The distinction without a difference, except on the wrong side, as to contempts committed *out of the presence* of the Court, did not then, nor for many years afterwards, prevail; but prevailed finally by positive enactment, rather more perhaps because it was an abridgment of judicial power, the *terriculum* of the democracy, than for any weightier reason; for the most penetrating and corrupting of contempts, such as requires immediate redress, to take an obstruction out of the very path in which a Court of justice is moving at the time, is a contempt *out of Court*, upon the face of a widely diffused newspaper. The laggard redress by indictment is a mere name and a shadow, as ineffectual as a reprieve after execution executed. As far as I know, it has never been resorted to. The impartial trial of a cause which can be made to excite the public interest and passion, is at this time of day hardly possible in Pennsylvania. The Judges must now see in the public press, everything which prejudice and venality may choose to exhibit to their disturbance; and they cannot prevent the jurors from also seeing it. The fillet with which fiction covers the eyes of Justice to make her blind to the inequality of the parties, is taken from her eyes, and her arms are pinioned with it. The old doctrine of contempt of Court, is an immense safeguard to trial by jury.

There was a subsequent occasion, on which Mr. Lewis with much decision asserted the dignity of his profession, and the rights of the defendant and the jury, in opposition to the Court. In this case it was the eloquence of action and not of words.

He had been counsel for John Fries, an insurgent of Northampton County, in Pennsylvania, upon a former trial before Mr. Justice Iredell, of the Supreme Court of the United States, and Peters the District Judge, upon an in-

dictment for treason, where the law had been fully discussed, and Fries had been convicted. A new trial was awarded by the Court on the ground of declarations by a juror, ascertained by the defendant and his counsel after the verdict had been rendered. Before a jury was empanelled for the new trial, Mr. Justice Chase, of Maryland, who was in the seat before occupied by Judge Iredell, informed the Bar, that the Court had made up their opinion upon the law of treason involved in the case; and to prevent being misunderstood, they had reduced it to writing, and had directed copies to be made for the District Attorney, the counsel of Fries the prisoner, and the jury; which were then handed for distribution to the Clerk of the Court, who placed them on the table at the Bar. Mr. Lewis with some deliberation and solemnity rose from his seat, slowly approached the papers, and lifting one of them to his eyes, gave a short glance at it, and threw it down upon the table. He then withdrew, and retired from the place he had occupied, without uttering a word. Mr. Edward Tilghman approached him, said a few words to him about the innovation, and after the transaction of some other business, the Court adjourned for the day. On the next morning, when the cause was called, Mr. Lewis informed the Court, that upon full and solemn consideration, he declined proceeding as counsel for the prisoner, as the Court had prejudged the law; and Mr. Dallas, his colleague, declared himself to the same effect, though with a hesitation, he said, which he would not have felt, if the Court had not appointed him as assistant counsel for the prisoner. There was profound silence, and deep sensation at the Bar, and the Court had no doubt been previously led to expect it; for Judge Chase informed the counsel, that they were not bound by the opinion, but might contest it on both sides, and Judge Peters expressed a *wish* that the counsel would proceed, and take the course they should think proper. The papers, he said, were withdrawn. The Judge had probably deferred to Judge Chase, and let the papers go as the opinion of the Court, without any very cordial sanction. Mr. Lewis, with few, but distinct

and solemn words, replied : “ The Court has prejudged the law of the case—the opinion of the Court has been declared—after such a declaration, the counsel can have no hope of changing it,—the impression of it must remain with the jury,—the counsel, therefore, will not act in behalf of the prisoner.” The effect was electric ; for Mr. Lewis had the full sympathy of the Bar.

Judge Chase, however, did not forget his personal dignity, nor the dignity of the Bench, upon hearing this definite reply. He immediately rejoined to the effect, that then, with God’s help, the Court would be the counsel of the prisoner, and would see that he had a fair trial. And no doubt he had a fair trial, and was convicted a second time, and sentenced to death. But the pardon that ensued was not improbably induced, in part, by what had happened. The life of the prisoner was saved, and the conduct of Judge Chase was made an article of the impeachment subsequently preferred against him by the House of Representatives ; and sixteen out of thirty-four senators recorded against him, upon that charge, the vote of guilty. The larger number voted for his acquittal, upon the ground, probably, of the absence of all corrupt or oppressive intention. It was acknowledged that the previously declared opinion of the Court had been sound in point of law.

I was present at this scene, in April, 1800, and have given it as my memory retains it. The act of the Court was not regarded by the Bar as one of intended oppression of either the prisoner or his counsel, but as a great mistake, resulting, in part, from the character of the principal judge, a very learned and able man, but confident and rather imperious, and in part from his greater familiarity with the Maryland practice, where the judge used to respond, and perhaps still does, more exclusively for the law, and the jury for the facts, or rather more dividedly or separately, than was, in point of form, the usage in Pennsylvania. In a criminal cause like this, however, the course of the Court would probably have been regarded as a mistake anywhere. It served as a signal lesson to stimulate the sense of profes-

sional independence, in asserting all the rights of counsel, of the accused, and of the jury, in criminal causes; and fitly closed Mr. Lewis's career in this description of case.

The range of judicial questions which occurred between the peace of 1783, with Great Britain, and the end of the last Federal Administration of the Government, in the year 1801, the most brilliant part of Mr. Lewis's professional life, and when his intellectual powers were certainly in their zenith, was remarkably large and important. Before the country had attained the lawful age of man or woman, the fullest demands for juridical wisdom and experience were upon it. Questions of prize and of the jurisdiction of the admiralty,—questions concerning the rights of ambassadors and the privileges of consuls,—concerning the obligations of neutrality, the right of expatriation, the right of naturalization by the States, the construction of the treaty of peace with Great Britain, the case of the Virginia debts, and of confiscations and attainders complete or incomplete before the peace, the constitutional powers of the Federal Courts, the powers of Congress, the constitutionality of the carriage tax, the nature and characteristics of direct taxes imposed under the Federal Constitution,—questions of conflict between the authority of the States and of the United States, and between the States severally under the Confederation, and cases of high crimes, both at sea and on land, against the United States, were rising up from day to day for solution; and in most of them Mr. Lewis took a part, and held a position, that was worthy of the questions, and worthy of his own powers also.

His general manner in arguing an important cause, cannot be well appreciated by the reader, without some recollection of his rather peculiar person and countenance; and yet the effect of the whole man in action, was so remote or different from the appearance of his person at rest, that no one could infer the one from the other. At rest, strictly speaking, he never was, while in Court; but when he was not trying or arguing a cause, he was quizzing or joking, or mooting or smoking, generally in a state of unrest.

When fully engaged in argument, he saw nothing and thought of nothing but his cause ; and, in that, would sometimes rise to the fervor and energy of a sibyl.

He was about six feet in height as he stood, and would have been more if he had been bent back to a perpendicular from the curve,—not a stoop of the shoulders,—in which he habitually inclined forward. At the same time he was very spare of flesh, and destitute of almost all dimensions but length.

His countenance was intellectual, but its general effect was hurt by his spectacles, and by the altitude and length of his nose, of which, nevertheless, he was immensely proud. The nose so entirely absorbed the expression of his eyes and the rest of his features, that most of the young gentlemen at the Bar, in his time, could draw a striking likeness of Mr. Lewis, by a simple outline of his nose. When the spectacles were entirely removed from his eyes, to see or read near at hand, you perceived that their expression was kindly and gentle ; but when he looked through his glasses at the Court or jury, they assumed the expression that belonged to the sentiment or passion that moved him, and sometimes it was a rather truculent one.

He abominated the Gallican invention, as he called it, of pantaloons, and stuck to knee breeches all his life ; and, under the same prejudice, he adhered to hair powder and a cue, because the French revolutionists had first rejected them from their armies. When he presented himself, in what he deemed the only forensic dress, a full suit of black and powdered head, even a stranger would expect to hear something worth hearing from that animated and imposing figure ; and by the first sentences of his speech, usually addressed, with a self-confident sweep of the head, and in a deep barytone voice, to the Court, and, if necessary, to the jury, the attention of every one would be arrested.

His first attitude was always as erect as he could make it, with one hand insinuated between his waistcoat and his shirt, and the other lying loose upon his loin ; and in this position, without any action but that movement of the head,

he would utter two or three of his first sentences, generally well-prepared to introduce some notice of the position and solicitude of his client, or some special characteristic of the case, and almost universally, some general principle or truth that he held to underlie his client's cause, and to bespeak the favor of the Court and jury. Then, with a quick movement, and sometimes with a little jerk of the body, he would bring both his hands to his sides, and begin the action. And it was pretty vehement action from that time to the conclusion; his head dropping or rising, his body bending or straightening up, and his arms singly or together relieving his head, and doing their part of a rather animated duty, but without a vestige of grace or preparation in any of his movements, all of them, however, sympathizing with the temper or expression of the moment. His voice never failed him. It was deep, sonorous, and clear to the last; and his pronunciation, without the least monotony or affectation, always conformed to the best standards in the language.

He had one, and I think only one, peculiarity, which never deserted him in solemn speaking, though it was not observable in conversation. It was not, strictly speaking, an accent, nor a pronunciation, but rather had the air of an impediment,—a lingering upon a few unemphatic words, as if he could not get them out. It was no impediment, however; but he dwelt upon them with the purpose of making them more emphatic. *Clear* and *plain* were two of these words. He was sometimes faulty in his taste, even in a grave harangue; and one of the recollections of this which remains the most distinctly with me, reminds me of this peculiarity, and at the same time of his sleepless anti-gallicanism.

He was arguing a very grave cause in the Supreme Court of the United States on a morning which had brought the news of some fresh atrocity in the French Revolution; and, after laying down a position of law, and proving or defending it with great strength and skill, having no relation however to France, or to the Revolution, or to anything associ-

ated with either, he exclaimed, "And this, may it please your Honors, is as *cul-lear* and as *pul-lain* as that the Devil is in Paris, and *that* nobody can doubt." Plain was always *pul-lain*, and clear *cul-lear*, in Mr. Lewis's solemn arguments. There were two or three other words of one syllable, with an *l* as the turning letter, that he clung to in the same manner in his harangues.

It may be perceived, from this account of him, that Mr. Lewis never dozed in his speeches, nor let any one else doze, who was within hearing. Yet he was never vociferous. His voice was not sweet, but it was a fine working voice for a court-room. He was animated, sonorous, and continuous or sustained to the end, without break or pause, except to lift his spectacles, and cast his eye upon his sheet of notes; and he brought all his arguments to a close within a reasonable compass of time.

It would be regarded by every one who knew him, as a defect in this description of Mr. Lewis, if two or three of his *maculæ*, perhaps *nebulae*, were painted out, or left without notice, since he was as well known by them as by his better parts, and he took as little pains to cover them up. The spots or clouds were in the outward man, and the deepest of them not so deep perhaps as he inclined to have it thought. They did not touch his professional integrity, nor his fidelity to the law.

He smoked cigars incessantly. He smoked at the fireplace in Court. He smoked in the Court Library. He smoked in his office. He smoked in the street. He smoked in bed; and he would have smoked in church, like Knock-dunder, in the Heart of Mid Lothian, if he had ever gone there. The servitude was unremitting, as to a most imperious master. It did not look like an accommodation to health or to taste, but like submission to a conquest by external power.

The smoking in bed was, in one instance, literally verified by myself and my venerable master, upon a winter journey to the Supreme Court at Washington, in the year 1809, when, in the days of coaching, we passed our first night at

Head of Elk; and I called Mr. Ingersoll's attention to it, after we had got into our respective beds in the same large room, and the last candle had been extinguished. The cigar was then seen firing up from Mr. Lewis's pillow, and disappearing in darkness, like a revolving light on the coast. He was once ordered into the custody of the Marshal, by Judge Chase, who affected to believe that the audacity was in some interloper at the chimney corner of the court-room; but Judge Peters explained, *sotto voce*, and it passed. The cigar did not reappear in that presence. In the Supreme Court of the State it was winked at before the time of Chief-Justice Tilghman; but soon after he came to the Bench, it was relegated to the Library. It had been tolerated the longer because no one imitated the example, and it had the asserted apology of weak health.

Mr. Lewis sometimes exhibited a stain of an antecedent day, in indelicate allusions at the side Bar, and in the presence of younger men, as well as of his contemporaries, with all of whom he did not seem to be unwilling to have it pass, that he led a careless, convivial, and half-libertine life, much beyond the reality. This, however, was while he was a widower, having no young children about him, and before his second marriage to a most pleasing lady who survived him. The influence of the sex, as much perhaps as better moral perceptions and taste, has, in later times, expelled such *opprobria* from the presence of gentlemen everywhere.

But the spots most annoying to the Bar, were discernible in his practice there, in the later years of his life, without, however, committing his professional honor, or bringing any serious inconvenience upon his clients. They were, it is true, not constantly seen, but still not unfrequently. He was singularly chary of his reputation for skill and efficiency in the trial of causes; and if he was not well prepared at the necessary moment, as sometimes happened when he grew older, he would baffle the Bench and the Bar in their efforts to bring him into action. In such an emergency he would show a great fertility of device in eluding the trial or argument for the time, and when every other failed, he

would be inimitably indisposed in health. His great resort, if compelled to go on, and he had the conclusion of the argument, was to study his cause while it was in progress before the Court, as he could do, intensely, and bring out new points, after his adversaries had closed upon all that had been advanced in the opening. The Court was compelled to meet this practice by a general rule prohibiting new points by the concluding counsel. The rule was general, but the aim of it was exclusively directed at Mr. Lewis. He was never uncandid, except from some such necessity,—which a better use of that part of his time, which belonged to his clients, would have obviated. There seemed to be no native taint in him; his heart was kind and true, his principles in general were manly, and his friendship sincere and constant. He looked upon this practice, unfortunately, I think, as a license of professional strategy in the service of his clients. A little less confidence in his intellectual powers, and a little more prudence in the economy of time, would have saved him from a distrust on such occasions by the older men of the Bar, which might sometimes be seen when they were opposed to him in the trial of a cause.

These were spots in the sun, you may say; but from the time I first knew him, they were observable and observed; so much so, that to have omitted all notice of them, would have impaired the truth of the description, personal and professional, that I have endeavored to give of him.

The last cause he tried was *Willing v. Tilghman*, in the spring of 1819; where, on behalf of the late Chief Justice, the defendant, I opposed him. I well remember that the Chief Justice, who had been his contemporary at the Bar, and who was urgent for the trial, expected that I should have to meet Mr. Lewis's now very usual effort for procrastination, and stood near me to affirm my opposition, until the jury was sworn, when he retired from the court-room. In the course of Mr. Lewis's reply, he became faint, and sat down. But soon recovered himself and went on. On this occasion his indisposition was certainly unfeigned. He never

appeared in Court afterwards, and died in the month of August following.

There can be no doubt whatever that Mr. Lewis was a very learned lawyer, fully awake to the elevation and dignity of his profession, and prompt to maintain them whenever vindication was necessary, though occasionally unbending a little too much at the side Bar. He was a clear and logical reasoner, and of very vigorous mind, rising at times, in his oral arguments, to the highest eloquence of reason, though no man cultivated less the graces of oratory. He was moreover subtle, ingenious, full of resources, and perhaps as shining an advocate in a bad or doubtful cause, as he was able in a good one. In some points he was not without resemblance to *Saunders*, his favorite authority, in both the strength and weakness of his parts—something less strong perhaps, and decidedly less weak. He contributed much to elevate the standard of law and of professional effort at the Bar; and if he had possessed a little more *retenue*, might have done as much for the standard of manners, wherein he fell something short; less however in reality, than by contrast with the high professional carriage of his eminent contemporaries.

(To be continued.)